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MASTER OF MILITARY STUDIES

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**TITLE:**

PRIVATE MILITARY AND SECURITY COMPANIES - COUNTERINSURGENCY AND  
NATION BUILDING STRATEGY

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## Executive Summary

**Title:** Private Military and Security Companies - Counterinsurgency and Nation-Building Strategy

**Author:** Major Stéphane Briand, Canadian Army

**Thesis:** This essay will examine the contemporary use of private military and security companies (PMSC) and argue that they have a place in counterinsurgency operations and nation building strategies.

**Discussion:** In the wake of an ever-increasing global demand for security over recent years, a number of PMSCs have been created. It is recognized that the supervision and control over the activities of PMSCs so far has been inconsistent. However, the international community and the industry have worked to develop principles of employment and have established a framework for self-regulation. In a parallel effort with the United Nations (UN) to regulate the employment of PMSCs, on 2 December 2005, the Swiss Federal Council adopted a resolution on PMSCs. The Swiss initiative stated two main objectives: 1) to clarify the existing obligation of states and other actors under international law and 2) to develop good practices, regulatory options and other measures at the national and possibly international level. Along with the International Committee of the Red Cross, the Federal Department of Foreign Affairs released the Montreux Document in September 2008. One of the other positive outcomes of this initiative was the creation of the International Code of Conduct (ICoC) for Private Security Service Providers, which is a response by the industry to self regulate. More than 554 PMSCs from 64 different countries have signed the draft ICoC and signatory companies publicly commit to operate in accordance with the Code and to work with relevant stakeholders to establish this mechanism and related standards by the end of 2013.

The world is evolving in a way that PMSCs, in combat or in non combat roles, will be present and active whether it is desired or not. PMSCs are currently being used *en masse* and it serves nation states well. The private sector brings rapid capacity to the fight. Few people realize how the various U.S. departments are now dependent on PMSCs in their day-to-day operation, from front line logistics to conducting security operations. The general assumption is that PMSCs provide services that are competitive, cheaper, and more efficient than government agencies. It is not clear at this time on whether the PMSCs cost less over time than state armed forces. There are several studies that indicate that private companies are more cost-efficient, but some suggest the opposite.

**Conclusion:** It is recognized that PMSCs can be a force multiplier in combat, in a COIN environment, or as part of a nation-building strategy. From all of the problems and initiatives addressed in this paper, the negative perception surrounding the employment of PMSCs appears to be the source of most contention. Once the international legal framework is in place, PMSCs, the private sector, and nation states will benefit from a better understanding of each other's roles and how they can manage security challenges in the future.

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## **INTRODUCTION**

For decades, private military and security companies (PMSC) have been employed in developing and industrialized countries where U.S. forces, allies, international organizations, and private industries have operated. In recent years, a greater number of PMSCs were created in a wake of an increasing global demand for security. Even the United Nations (UN) has become a regular client since fewer countries are providing adequate forces to fulfill their missions. Following many incidents concerning PMSCs accused of killing civilians and using unwarranted force, there have been important developments in the regulation of PMSCs. With an International Code of Conduct being drafted and the framework of operation already in place from the Montreux Document, it is time to revisit the importance of employment of PMSCs in today's security challenges.

Following the withdrawal of forces in Iraq, the upcoming mission termination in Afghanistan, and the unwillingness of governments to contribute ground forces, many countries will have no choice but to rely on PMSCs in the future. Furthermore, the overall western military capacity will decrease over the coming years because of financial restrictions, budget cuts, and shifting priorities, while the number of conflicts and demand for security will likely grow. This essay will examine the contemporary use of PMSCs and argue that they have a place in counterinsurgency (COIN) operations and nation building strategy. First, the historical overview and the definition of the current terminology on the subject will establish the origins of PMSCs. This will be followed by a review of the current initiatives in self-regulation and reasons why states and private corporations should now consider PMSCs. Finally, the essay will finish with recommendations for the employment of PMSCs in COIN operations and nation-building strategies.

## HISTORICAL BACKGROUND

From historical context, the privatization of security is more the standard than the exception. Some will even argue that it is the second oldest profession in the world; it has essentially been around for as long as war has been fought. In the first and second century BCE, Carthaginians used mercenaries from Numidia.<sup>1</sup> In 522 BCE, the Persian Emperor Darius used regiments of Greek mercenaries against Alexander the Great.<sup>2</sup>

Sarah Percy, Research Associate in the Oxford Leverhulme Programme on the Changing Character of War, extensively researched the historical evolution of the employment of mercenaries and the outsourcing of military force. The idea against, or at least the regulation of, the employment of mercenaries emerged in Europe in the twelfth century. Back then, mercenaries' behavior was a threat to political authority; they were bandits, and they would loot and pillage to meet their needs. But Percy acknowledges that the mercenaries of the twelfth century are far different from the mercenaries in the twenty-first century. Gradually the norms of mercenaries' employment would be reinforced and by the end of the seventeenth century, the market for force was entirely under the control of the states. To this date, the Treaty of Westphalia in 1648 is the widely accepted, state-centric security model, which emerged from this military revolution and serves as the foundation of the UN charter and the concept of collective security. During the Napoleonic wars, half of the Prussian army and one third of the French forces were soldiers for hire. Prussian "hessians" were hired by the British to fight during the American Revolution. Germans are well known to have fought for the highest bidder for centuries. Until late into the nineteenth century, military history is marked with almost non-stop use of mercenaries, both as individuals and as forces, in major conflicts all around the world.<sup>3</sup>

## **DEFINITIONS**

The lexicon used in the study of PMSCs is not clearly defined. Certain terms and their definition are recognized among most scholars and contractors, but some are still contentious. For the purpose of this paper, the term PMSC will be used, as defined by the Montreux Document, as “private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, (such as convoys, buildings, and other places); maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.”<sup>4</sup> This definition incorporates the private security companies (PSCs) and the private military companies (PMCs) into a single designation, PMSCs.

The term mercenary is broadly used in the media, sometimes referring to foreign military units, PMSCs, terrorists, drug smugglers, and arms dealers, most of whom are truly international criminals. Webster’s dictionary definition of a mercenary: “one that serves merely for wages; especially: a soldier hired into foreign service” is probably what most people identify as a mercenary.<sup>5</sup> The UN definition is also a controversial topic and corporate actors are requesting a reformulation to account for non-traditional security threats and a focus on the problem of accountability.<sup>6</sup> Currently, the UN uses the third protocol to the Geneva Convention (1977), and UN General Assembly Resolution 44/34 (1989) on the International Convention against the recruitment, use, financing and training of mercenaries to define what a mercenary is: “Summarized, a mercenary is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar

rank and functions in the armed forces of that party; is not a national of the state in which the conflict is fought nor a citizen of one of the parties to the conflict; and has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.”<sup>7</sup>

The industry is trying to separate the current common definition of “mercenaries” from “PMSCs.” James R. Davis, ex-Canadian paratrooper, a former Executive Outcome employee, and writer, offers a much more comprehensive and detailed definition. He breaks down the mercenary definition into four categories and seven conditions that need to be met to be identified as a “legitimate mercenary” or a member of a PMSC. A PMSC member needs to be part of a Regular Foreign Unit, Auxiliary Foreign Unit, Foreign Volunteer, and Private Military and Security Company. The following seven conditions need to be met:

- “That the occupation of mercenary must be directly linked with the occupation of soldier;
- “That the candidate must operate in either a uniform common to a body of mercenary troops or in the recognized uniform of the client state’s armed forces, including insignias of rank and Unit;
- “That the candidate must be paid for his service;
- “That the candidate must conduct his operation in a nation other than that of his birth or naturalization regardless of changes in government to the home state
- “That the candidate must take a direct role in either the conduct of combat operations or in supplying combat support;
- “That the candidate must be engaged by: (a) an internationally recognized nation; or (b) in the event of a civil dispute, by a legitimate interim government that represents a significant portion of the population and has been recognized by a minimum of one

foreign nation;

- “That the candidates must be seen to recognize and conduct himself by the Law of the War, the Geneva Conventions and the International Declaration of Human Rights and Freedoms.”<sup>8</sup>

Davis’s definition offers some legitimacy to the profession and separates it from the criminal-like mercenary often pictured in the media. Should the UN adopt such a definition, it would definitely support its attempt at stopping the recruitment, use, financing, and training of mercenaries or what Davis calls “international armed criminals,”<sup>9</sup> as it would disregard any attempts of legitimacy as soon as one condition is not met. The mercenary would need to fall into one of the four legitimate categories as member of the national army employed in a regular foreign unit, in a auxiliary foreign unit; as a individual foreign volunteer all of which reporting under the command of the national government; or an interim government with the support from the international community. The fourth category would be comprised of the PMSCs as a licensed and registered business subjected to the regulation and control of the home country in which it operates.<sup>10</sup> All of the above are covering the non-traditional threats and are bringing accountability to mercenaries currently lacking in the UN definition.

## **CURRENT INTERNATIONAL REGULATION INITIATIVE**

The presence of PMCSs in armed conflicts is not a new phenomenon; their numbers have increased over the last years and, more significantly, the nature of their activities has changed. In addition to the more traditional logistical support, PMSCs have more and more become involved in activities that bring them close to the conduct of combat military operations. Those tasks include defending infrastructures, protecting persons, escorting

humanitarian aid convoys, training and advising armed forces, operating complex weapons systems or gathering intelligence. Sometimes, even participation in armed combat is a service offered by PMSCs.<sup>11</sup>

The use of force is usually a function and a right upheld by the state. Under what provision should the employment of force and security functions be delegated to PMSCs?<sup>12</sup> The supervision and control over the activities of PMSCs so far has been inconsistent, however, the international community and the industry have developed principles of employment and have established a framework for self-regulation.

## **SWISS INITIATIVE**

In a parallel effort with the UN to regulate the employment of PMSCs, on 2 December 2005, the Swiss Federal Council adopted a resolution.<sup>13</sup> This resolution was the starting point of an international initiative led by the Federal Department of Foreign Affairs (FDFA) to encourage PMSCs to comply with international humanitarian laws and human rights in conflict areas. The Swiss initiative stated the following objectives: 1) to clarify the existing obligation of states and other actors under international law and 2) to develop good practices, regulatory options and other measures at the national and possibly international level.<sup>14</sup> Along with the International Committee of the Red Cross, the FDFA released the Montreux Document in September 2008. One of the other positive outcomes of this initiative was the creation of the International Code of Conduct (ICoC) for Private Security Service Providers.<sup>15</sup>

## **THE MONTREUX DOCUMENT**

The Montreux Document is the first international document to explain international law related to the activities of PMSCs. Seventeen States<sup>16</sup> signed the Montreux Document on “Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict” on 17 September 2008.<sup>17</sup> It also offers a compilation of good practices with the objective to assist states in implementing their obligations under international law through a series of national measures.<sup>18</sup>

The Montreux Document is divided into two parts. Both parts differentiate between contracting states, territorial states, and home states. Contracting States are states that directly contract for the services of PMSCs including, as appropriate, where such a PMSC subcontracts with another PMSC. Territorial States are states on which PMSCs operate. Home States are states of nationality of a PMSC, i.e. where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, then the State where the PMSC has its principal place of management is the Home State.<sup>19</sup> For each classification of states, Part I of the document addresses relevant international legal obligations according to international humanitarian law and human rights.<sup>20</sup> The second part lists the good practices drawn largely from existing practices of states not only directly in regard to PMSCs but also from existing regulations for arms and armed services. Part II introduces a wide range of good practices from introducing licensing regulations to ensure better supervision and accountability. In accordance with the Montreux document, only PMSCs that respect international humanitarian law and human rights laws can provide services during armed conflict.<sup>21</sup>

Still, the Montreux document did not create or mandate an enforced international system for accountability for PMSCs that would address international legislation gaps. The

responsibility to enforce international law still resides within contracting states, territorial states, and home states regarding the employment and the contracting of PMSCs.<sup>22</sup>

## THE UN INVOLVEMENT

The UN is also engaged in the issue of mercenaries. Although they have been associated primarily with the African continent, mercenaries have emerged in recent years in diverse locations such as Asia, the Balkans, the Caucasus, Central America, and the South Pacific.<sup>23</sup> The UN working group focuses on mercenaries violating human rights and impeding the exercise of the rights of people to self-determination. The group was created in July 2005 for a three year term, and has been extended twice already but has failed to produce any convention on the subject.<sup>24</sup> The existing UN Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989), does not apply to the new PMSC industry definition and, according to the UN Mercenaries Working Group, it is still unclear how international humanitarian and human rights laws apply to PMSCs and how they can translate into concrete obligations by the states. There are a large number of examples that show failed attempts to prosecute alleged human rights violations to trial. DynCorp was a contractor as part of “Plan Colombia” engaged in counter-narcotics operations involving negligent use of aerial fumigation in the early 2000’s. To this day, many Ecuadorian farmers affected by the operation are still pending resolution.<sup>25</sup> This specific case has been claimed under Florida State law, Ecuadorian law, and International law.<sup>26</sup> In Iraq on 8 July 2006, in another highly publicized case contractors working for Triple Canopy shot and killed civilians for no better reason than “for sport.”<sup>27</sup> Unlike Blackwater/ Xe contractors involved in the Nisour Square massacre, these Triple Canopy personnel completely escaped prosecution because Triple

Canopy was unable to determine the circumstances behind the shootings. The Washington Post reports that: “Triple Canopy officials said they have lobbied for more regulation of contractors since 2004 to better define how incidents such as the shootings on July 8th are reported and investigated.”<sup>28</sup>

## **SELF-REGULATION ATTEMPT**

The International Code of Conduct (ICoC) is an initiative convened by the Swiss government and DCAF following the publication of the Montreux Document. The steering committee is composed of: stakeholders from the industry represented by GardaWorld, Triple Canopy, Aegis, and Drum Cussac; from civilian societies represented by Human Rights Watch, Center for Business and Human Rights University of Zurich, and Human Rights First; and from various governments represented by US Department of State, Australian Department of Foreign Affairs and Trade, and UK Foreign Commonwealth Office. The steering committee’s aim is “setting PMSCs principles and standards based on international human rights and humanitarian law, as well as to improve accountability of the industry by establishing an external independent oversight mechanism.”<sup>29</sup> By now more than 554 PMSCs from sixty-four different countries have signed the draft ICoC and signatory companies publicly commit to operate in accordance with the Code and to work with relevant stakeholder to establish this mechanism and related standards by the end of 2013. Once ratified, the ICoC will fill the accountability and oversight mechanism gap that was not address by the Montreux document.<sup>30</sup>

## **CURRENT EMPLOYMENT**

PMSCs are employed where weak governments are in search of strength, where government needs to fill a void, or when transitional states are in search of support. In the first

category, PMSCs are contracted by a state to perform military activities because of the state's inherent inability to do so. In most cases the host country may not have a capable professional army or the international community may be slow or unwilling to commit forces. In Africa, particularly in Angola and Sierra Leone, the uses of PMSCs are prime examples where PMSCs have performed a tactical and operational role. This includes the training, planning, and conduct of military operations needed by that country to field its own security capability and achieve its desired end state. The intervention of Executive Outcomes (EO) in Angola and Sierra Leone is a great example where attempts were made to restore stability in the region by PMSCs contracted to the government.<sup>31</sup>

The second category where government needs to fill a void is where we see the greatest use of PMSCs over the last ten years. The downsizing of the US military following the end of the Cold War and the first Gulf War allowed the growth of contractor reliance to support the latest weapons and provide lifetime support for the systems.<sup>32</sup> Today, contractors are imbedded in most major system maintenance and support. After the 11 September 2001, attacks on the World Trade Center and the Pentagon, there was another major increase in the formation of new PMSCs. But it is the commitment of forces in Iraq and Afghanistan and the miscalculation of the number of troops required in a full blown occupation and COIN operation that forced the hand of the US government into outsourcing security to contractors. PMSCs have provided services in three main categories in Iraq: personal security details for senior civilian officials, non-military site security, and non-military convoy security. Rather than working for and reporting to the US government, most PMSCs were subcontracted to provide security to prime contractor's employees, or were employed by Iraqi companies or private foreign companies seeking business opportunities in Iraq.<sup>33</sup>

Finally, transitional states in search of support are employing PMSCs for assistance. The assistance effort can be contracted by donor states or hired by the transitional states. In Afghanistan alone, the US government, acting as a donor state along with other NATO countries, has allocated \$43 billion to train, equip, and sustain the Afghan National Security Forces (ANSF) from fiscal years 2002 to 2011.<sup>34</sup> Western nations are also spending an increasing amount on the reform and training of security personnel in Africa. For example, the UN Mission in Liberia (UNMIL) is contracting out to DynCorp and PAE for the vetting, recruitment, logistics, and basic military training of 2000 civilian police officers. This contract, which is administered by the Department of State, is projected to cost \$95 million.<sup>35</sup> Transitional states like Croatia, Bosnia, and Romania are hiring PMSCs to assist in their own distinct security challenges.

## **WHY PMSCs SHOULD BE CONSIDERED**

The world is evolving in a way that PMSCs in combat or non combat roles will be present and active whether we want it or not. The policies for the future employment of PMSCs will need to be crafted to reflect that reality. The character of war is changing and modern armies look fundamentally different than historical militaries. The US World War II commitment where more than 40 percent of the US economy was directed to the war effort, where millions of citizens were in uniform, and where civilians collected tires, tin cans, and bought war bonds is long gone. One advantage that the private sector brings to public wars is capacity. Companies like Kellogg and Brown & Root (KBR), claim that they are capable of supporting the deployment of 50,000 troops anywhere in the world on a short notice.<sup>36</sup> Until another major world conflict arises, nations will continue on their current path where they will

turn to the private sector because they can do many things governments used to do, and better.<sup>37</sup> Over the last thirty years, the US government research and development budgets have decreased and the private sector has jumped well ahead. Innovation and creativity now reside within the private sector. In a globalized world, a robust private sector is part of national power. Today's global market is building those global networks in an unprecedented way. This dynamic works as the world globalizes. Prosperity is created and that wealth spills into the private sector, in turn the public sector turns to private business, using the private sector's power to help regulate the world market.<sup>38</sup> The US economy is dependent on other nations and transnational corporations for goods and services. It cannot function without globalization and the expansion of the private sector.

Private firms and corporations always have, and will need in the future, PMSCs to ensure their security and protection. With the upcoming end of mission in Afghanistan, the private security industry believes the number of PMSCs will rise with the planned departure of U.S. and coalition combat troops. Over the next years, as the governments will diminish their use of PMSCs, private firms will employ them to fill their security requirements. Mining firms are looking at exploiting untapped mineral resources in the region. In southern Iraq, since the withdrawal of U.S. troops and the downsizing of government personals, PMSCs are finding strong demand for security and protection from energy companies. Senior Vice President Pete Dorval of GardaWorld, a global risk management and security firm, claim that they "are as busy as ever and the need has never been greater."<sup>39</sup>

One other reason why PMSCs should be employed in the future is simply that they are currently being used *en masse* and it serves nation states well. According to the latest quarterly contractor census report issued by the U.S. Central Command in January 2013, there

were 136,204 contractors working for the Pentagon in Iraq and Afghanistan, as well as 18 other countries in its region. 110,404 PMSCs contractors are serving in Afghanistan and 8,449 in Iraq. These numbers do not include the contractors employed by the U.S. State Department.<sup>40</sup> There are more contractors than U.S. and coalition troops in the U.S. Central Command area of responsibility. Following the full withdrawal of U.S. troops in Iraq in 2011, the U.S. gives the impression that they are no longer engaged in security manners in the country. Still, in 2012, the U.S. government was maintaining a strong presence with approximately 13,500 PMSCs contractors, with more than half of them employed by the U.S. Department of State.<sup>41</sup>

Moshe Schwartz, specialist in defense acquisition at Congressional Research Service, testified in 2012: “According to the Department of Defense (DoD) data, from FY2008-FY2011, contractors in Iraq and Afghanistan represented 52% of the total force, averaging 190,000 contractors to 175,000 uniformed personnel. Over the last five fiscal years, DoD obligations for contracts performed just in the Iraq and Afghanistan areas of operation (\$132 billion) exceeded total contract obligations of any other U.S. federal agency.”<sup>42</sup> Few people really realize how the various U.S. departments are now dependent on PMSCs in their day-to-day operations.

Not everyone believes that PMSCs should play a major role in today’s security challenges. Journalists, academics, and NGOs have expressed concerns about PMSC’s employment and their mysterious nature. Lack of accountability and human rights abuses are at the center of the debate. Since the rapid expansion of PMSCs in the early 2000, many articles and books have underlined the absence of clear status under international law. On the ethical front, issues have been raised by the privatization of the use of force and many believe that it should remain under state control.

Nations states are also concerned about the increasingly important role and reliance

placed on PMSCs. The Commission on Wartime Contracting, set up by the United States in 2008, assessed the extent of waste, fraud, abuse, and mismanagement of wartime contracting in Iraq and Afghanistan. The final report of the Commission established that “at least \$31 billion, and possibly as much as \$60 billion, has been lost to contract waste and fraud.”<sup>43</sup>

## **COST SAVING Vs. EFFICIENCY**

After the September 11 attacks, PMSCs were one of the only stocks that gained value on the market. Since then, the industry has grown into a big business operating in more than one hundred countries on six continents, and with over \$100 billion in annual revenue. Fortune 500 reports that many Americans now own parts of the industry in their investments.<sup>44</sup> The opening of the market for PMSCs came at a time where world demand for security increased for the first time since the end of the Cold war. While the global demand for security is increasing, military forces around the world are downsizing, creating a vast pool of over six million recently retired soldiers. This gap in security requirements was easily filled by PMSCs.<sup>45</sup>

The general assumption is that PMSCs provide services that are competitive, cheaper, and more efficient than government agencies. According to Schwartz: “Contractors can provide significant operational benefits to DoD, including freeing up uniformed personnel to conduct combat operations; providing expertise in specialized fields, such as linguistics or weapon maintenance; and providing a surge capability, quickly delivering critical support capabilities tailored to specific military needs. Because contractors can be hired when a particular need arises and let go when their services are no longer needed, in some circumstances, hiring contractors can be cheaper than maintaining a permanent in-house

capability.”<sup>46</sup> The employment of DynCorp and MPRI as part of “Plan Colombia” is one example where outsourcing allowed the United States to assign military forces more efficiently. DynCorp and MPRI trained Bolivians, Colombians, and Peruvians in counternarcotic tactics and aircraft maintenance in lieu of U.S. government personnel’s, thereby enhancing DoD’s overall agility. Without DynCorp or MPRI, the United States would have created vacancies in key positions in the U.S. Southern Command, in military training institutions, and in combat units in order to support the U.S. strategy in South America.<sup>47</sup>

Outsourcing to PMSCs of military services is likely to continue in the short-to-medium term especially since their current employment is impacting on how equipment maintenance and support is currently provided to forces deployed around the world. PMSCs are also affecting how military forces are structured and how they are trained. Once you contract out military services, the requirement to train and maintain competency in that specific domain is no longer a necessity. To reacquire any competency contracted out over a period of time would demand time and energy. By that time, the requirement might already have changed.<sup>48</sup>

The U.S. Department of Defense has been privileging efficiency over cost in the way they have conducted business with PMSCs over the last decade. The “cost-plus” contracts have been used where PMSCs need to respond quickly when they are needed, provide the service, and bill after the fact with a “plus” added to the operating costs. This approach motivated PMSCs to provide surge capacity, however, when the surge turns out to be constant, this logic become non sustainable.<sup>49</sup> The \$293 million contract awarded to Aegis Defense Services in 2005 demonstrates how contracting was conducted in Iraq. The company, known for its expertise in anti-piracy effort, was chosen from six bidders, to provide armed bodyguards and to coordinate security among the thousands of PMSCs operating in the

country. Despite not being the lowest bidder and arguably not the best-suited firm for the task, Aegis Defense Services won the bidding process. US Army spokesman, Gary Tallman, reported that Aegis was selected “based on the criterion that was sought and Aegis’s technical capability, not so much cost.”<sup>50</sup> DynCorp later protested the contract.<sup>51</sup>

It is not clear at this time on whether the PMSCs cost less over time than state forces. There are several studies that indicate that private companies are more cost-efficient, but some suggest the opposite. For example, outsourcing supporters such as the Defense Science Board (DSB) and the Business Executives for National Security group, claim that significant cost savings can be achieved through contractor employment. In a 1996 study, the DSB projected, that outsourcing would provide \$1.2B to \$2B per year in cost savings to the DoD. But this statement has proven to be the most difficult to prove.<sup>52</sup> The Government Accountability Office (GAO) and DoD’s Program Analysis and Evaluation Directorate stated in a report to the Chairman of the Subcommittee on Military Readiness, that DSB’s projections were based on “errors in estimates and overly optimistic savings assumptions” that exaggerated actual savings by billions of dollars.<sup>53</sup> During this financial downturn and austerity period, strategies for achieving cost-efficient contracting will lead the discussion in defense budget preparation and will likely be a continuing trend in the debate about PMSCs.<sup>54</sup>

## **PMSCs, COIN, AND NATION-BUILDING STRATEGY**

Counterinsurgency (COIN) is the combination of comprehensive civilian and military efforts, as a whole of government approach, designed to contain simultaneously insurgency and address its origin. Unlike conventional warfare, non-military means are often the most effective elements, with military forces playing an enabling role.<sup>55</sup> Nation-building, as described by

RAND Corporation, “involves the use of armed force as part of a broader effort to promote political and economic reforms with the objective of transforming a society emerging from conflict into one at peace with itself and its neighbors.”<sup>56</sup> The connection between poverty and conflict is obvious in many regions around the globe and promoting stronger economies in those struggling countries is key to preventing international intervention. Developing economies represent great opportunities for private industries to start and develop new markets. For the last ten years, many companies have developed an expertise and have gained experience in conducting day-to-day business in a non-permissive environment. Those companies will require PMSCs in order to operate. In many cases, some of those states will fail and there will inevitably be international intervention. PMSCs will most likely already be present in the theatre of operation and military forces will need to interact with them.

PMSCs must be better involved during the planning and execution of a COIN and nation-building strategy. Their involvement must be done the right way so it does not counter the strategic goal set by a nation. Since contractors will provide additional capacity to face the security challenges and nation-building requirements, it is important to consider how best to utilize the resources of PMSCs. Proper communication channels between the military and the contractors is probably the most important aspect to ensure PMSCs do not undermine the COIN efforts. PMSCs must be knowledgeable of the strategic communication plan and adhere to it. Good practices and physical coordination need to be put into place. The military needs to be ready to manage the added friction created by an external player into an uncertain and complex environment. There is also a need to ensure quality in services and compliance with human rights regimes. Finally, there is a need to make sure that PMSCs act in accordance with existing laws and that they are held accountable for their actions.

With conflicts lasting for more than a decade, military strategy evolves from the experience gained in combat and from a better understanding of the environment where state armed forces are operating. Such strategy change needs to be communicated effectively to PMSCs, just like orders are passed down the chain of command to subordinate units. In Iraq 2007, the US changed its strategy from a force protection to civilian population protection, a legitimate shift inline with a COIN strategy. While US forces struggled in implementing the new direction, the need of ensuring the consent and acknowledgement of PMSCs was highlighted. But the local population still perceived the behavior of the PMSCs as confrontational and antagonistic, which rendered the overall aim of the new strategy less effective.<sup>57</sup> Since this undermines the effort, clear strategic communication must be effectively disseminated to PMSCs from day One.

The whole of government approach in a COIN strategy was not a new concept, but for US military it was not common knowledge. Since nation-building and stability operations require coordination with civil agencies, and international and non-governmental organizations, necessary procedures and physical coordination interface must be put in place. This is now well understood for senior officials in the US administration and this will facilitate the integration of PMSCs in the future.<sup>58</sup>

Many argue that PMSCs add friction to the already complex COIN environment. Errors, accidents, and misunderstandings will occur with or without enemy interference and directly affect in a negative way the implementation of the COIN strategy. Military commanders will also claim that since the PMSCs are not under their command it adds friction in the day-to-day conduct of operations. Military commanders should define an acceptable level of friction in that matter and the scope of PMSCs employability should be defined

accordingly in order to mitigate the possible negative impact on the efforts of the armed forces.<sup>59</sup> As previously discussed, PMSCs must be better integrated into the military strategy.

The establishment of good practices, physical coordination, and proper communication channels would lower friction and help military commanders to achieve their strategic goals.

Quality control must be part of the contract. An audit process should be put in place with the aim to ensure that the PMSCs are maintaining the appropriate levels of overall professionalism and expectations as prescribed by the contracting state. The audit would oversee examinations of all operational areas of employment of the PMSCs, rules of engagement reviews, use of force policies, and technical and maintenance inspection. PMSCs falling short of the prescribed standards would be sanctioned and could lose their license or contract.<sup>60</sup>

PMSCs must be held accountable for violation of the law. Nations employing PMSCs must put in place proper mechanisms to prosecute PMSC members or the organization if they violate international humanitarian law. Nations contracting PMSCs cannot excuse themselves of their obligations under international law. They must remain responsible for ensuring that the relevant standards are met and that the law is respected. The 2009 new Status of Forces Agreement between Iraq and the US government is a good example of where a clear legal framework is put into place to ensure accountability. The agreement states: “Iraq shall have the primary right to exercise jurisdiction over United States contractors and United States contractor employees.”<sup>61</sup> The proper execution and enforcement of such agreement hasn’t been seen yet, but steps are certainly being taken in the right direction. The ICoC self-regulation initiative for private security providers is also a step in the right direction.

## **CONCLUSION**

The use of PMSCs by states is not a new concept. The contracting relationship between the public and private sectors in the provision of security is the norm and how states have operated and are operating today. The employment of PMSCs has evolved over the last decade; military experts within the political scene have addressed the lack of accountability and the absence of an oversight mechanism in the industry, bringing a much needed understanding of PMSCs and better transparency.

PMSCs are detrimental to the accomplishment of military missions. They have affected our force structures and how we train and prepare units for future conflicts; not using them would have a damaging effect on our force readiness. While the jury is still out on whether PMSCs are cheaper than states armed forces, the next few years will clearly dictate how PMSCs can be employed in a difficult financial environment where the cost saving option will prevail. Although it is recognized that PMSCs can be force multipliers in combat, a COIN environment, or as part of a nation-building strategy, they will most likely always be utilized in combination of state armed forces. Finally, from all of the problems and initiatives addressed in this paper, the negative perception surrounding the employment of PMSCs appears to be the source of most contentious issues. Once the international legal framework is in place, PMSCs, the private sector, and nation states will benefit from a better understanding of each other's roles and how they can manage security challenges in the future.

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<sup>2</sup> Al J. Venter, *War Dog: Fighting Other People's Wars-the Modern Mercenary in Combat* (Haverstown, PA: Casemate, 2006), 4-5.

[http://books.google.com/books?id=o4w2xNemc\\_EC&pg=PA579&dq=The+Modern+Mercenary+quotes&hl=en&sa=X&ei=GBEwUdC7LIPf0gGcxIC4DQ&ved=0CC0Q6AEwAA#v=onepage&q=oldest&f=false](http://books.google.com/books?id=o4w2xNemc_EC&pg=PA579&dq=The+Modern+Mercenary+quotes&hl=en&sa=X&ei=GBEwUdC7LIPf0gGcxIC4DQ&ved=0CC0Q6AEwAA#v=onepage&q=oldest&f=false).

<sup>3</sup> Clement Tracol, “Private Military Companies in the Contemporary Security Context,” (*e-International Relation*, May 2012), 1. <http://www.e-ir.info/2012/12/21/role-for-private-military-companies-in-the-contemporary-security-context/>

<sup>4</sup> General Assembly Security Council, Letter dated 2 October 2008 from the Permanent Representative of Switzerland to the United Nation addressed to the Secretary-General, 6. [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/63/467](http://www.un.org/ga/search/view_doc.asp?symbol=A/63/467)

<sup>5</sup> “mercenary.” Merriam-Webster.com 2013 <http://www.merriam-webster.com> (16 Jan 2013).

<sup>6</sup> Ryan M. Scoville, “Toward an Accountability-Based Definition of Mercenary,” *Georgetown Journal of International Law*, Vol. 37, 2006: 563 <http://ssrn.com/abstract=952799>

<sup>7</sup> General Assembly, 44/34. International Convention against the Recruitement, Use, Financing and training of Mercenaries, 4 December 1989

<http://www.un.org/documents/ga/res/44/a44r034.htm>

<sup>8</sup> James R. Davis, *Fortune's Warriors: Private armies and the new world order* ) Toronto: Douglas & McIntyre, 2000), 74-75.

<sup>9</sup> James R. Davis, 74.

<sup>10</sup> James R. Davis, 75.

<sup>11</sup> Deborah D. Avant, *The Market of Force: The Consequences of Privatizing Security* (New York: Cambridge University Press, 2005), 17.

<sup>12</sup> Deborah D. Avant, 3.

<sup>13</sup> Swiss commitment, <http://www.eda.admin.ch/eda/en/home/topics/intla/humlaw/pse.html>

<sup>14</sup> Anne-Marie Buzatu, and Benjamin S. Buckland, 22.

<sup>15</sup> Swiss commitment, <http://www.eda.admin.ch/eda/en/home/topics/intla/humlaw/pse.html>

<sup>16</sup> Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom, Ukraine, and the US.

<sup>17</sup> “The Montreux Document on private military and security companies” Online, 1.

[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/63/467](http://www.un.org/ga/search/view_doc.asp?symbol=A/63/467)

<sup>18</sup> “The Montreux Document on private military and security companies” Online, 5.

[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/63/467](http://www.un.org/ga/search/view_doc.asp?symbol=A/63/467)

<sup>19</sup> General Assembly Security Council, Letter dated 2 October 2008 from the Permanent Representative of Switzerland to the United Nation addressed to the Secretary-General, 6.

<sup>20</sup> “The Montreux Document on private military and security companies” Online, 7.

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<sup>21</sup> “The Montreux Document on private military and security companies” Online, 12.

[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/63/467](http://www.un.org/ga/search/view_doc.asp?symbol=A/63/467)

<sup>22</sup> James Cockayne, “Regulating Private Military and Security Companies: The Content Negotiation, Weaknesses and Promise of the Montreux Document”, (Oxford University Press 2009), 427. <http://jcls.oxfordjournals.org/content/13/3/401.full.pdf+html>

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<http://www.ohchr.org/Documents/Publications/FactSheet28en.pdf>

<sup>24</sup> “Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination” Online,  
<http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/WGMercenariesIndex.aspx>

<sup>25</sup> Kim-Jenna Jurriaans, “Reining in Private Security Faces Regulatory Thicket,” Inter press service, August 2012. <http://www.ipsnews.net/2012/08/reining-in-private-security-faces-regulatory-thicket/>

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<sup>27</sup> Molly Dunigan, *Consideration for the use of private security contractors in future U.S. military deployments* (Santa Monica, CA: Rand June 2010), 2.

<sup>28</sup> Steve Fainaru, *Four Hired Guns in an Armored Truck, Bullets Flying, and a Pickup and a Taxi Brought to a Halt. Who Did the Shooting and Why?* (Washington Post Foreign Service, April 15, 2007) Online.  
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<sup>29</sup> International Code of Conduct for Private Security Service Providers, Online  
[http://www.icoc-psp.org/Home\\_Page.html](http://www.icoc-psp.org/Home_Page.html)

<sup>30</sup> International Code of Conduct for Private Security Service Providers.

<sup>31</sup> Simon Chesterman and Chia Lehnardt, eds. *From Mercenaries to Market: The rise and Regulation of private Military Companies*. (New York: Oxford University Press, 2007), 69.

<sup>32</sup> Simon Chesterman and Chia Lehnardt, 82.

<sup>33</sup> Simon Chesterman and Chia Lehnardt, 84.

<sup>34</sup> United States Government Accountability Office (GAO), Long-standing Challenges May Affect Progress and Sustainment of Afghan National Security Forces, 24 Jul 2012, 2.  
<http://www.gao.gov/products/GAO-12-951T>

<sup>35</sup> Simon Chesterman and Chia Lehnardt, 95.

<sup>36</sup> James J. Carafano, *Private Sector, Public Wars: Contractor in Combat – Afghanistan, Iraq, and Future Conflicts* (Westport, CT: Praeger Security International, 2008), 120.

<sup>37</sup> James J. Carafano, 115.

<sup>38</sup> James J. Carafano, 117.

<sup>39</sup> Peter Aps, “As Iraq, Afghan wars end, private security firms adapt,” *Reuters*, October 2012, <http://www.reuters.com/article/2012/10/21/us-usa-arms-contractors-idUSBRE89K02B20121021>

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[http://www.acq.osd.mil/log/PS/CENTCOM\\_reports.html](http://www.acq.osd.mil/log/PS/CENTCOM_reports.html)

<sup>41</sup> David Isenberg, “Contractor in War Zones: Not Exactly Contracting”, *Time U.S.*, October 2012, <http://nation.time.com/2012/10/09/contractors-in-war-zones-not-exactly-contracting/>

<sup>42</sup> David Isenberg.

<sup>43</sup> Lou Pingot, “Dangerous Partnership Private Military & Security Companies and the UN.”, Global Policy Forum, June 2012, 18.

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<sup>45</sup> Peter W. Singer, “Peacekeeping, Inc.”

<sup>46</sup> David Isenberg.

<sup>47</sup> Allison Stanger, and Mark Eric Williams, “Private Military Corporations: Benefits and Cost of Outsourcing Security,” (*Yale Journal of International Affairs*, Fall/Winter 2006), 10.

<sup>48</sup> Stockholm International Peace Research Institute, “The private military services industry”, Online <http://www.sipri.org/research/armaments/production/researchissues/pmsc>

<sup>49</sup> Rebecca Weiner, “Private Military Contractor Come with Strings Attached,” (*Belfer Center Newsletter*, Belfer Center for Science and international Affairs, Harvard Kennedy School, Winter 2005-06)

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<sup>50</sup> Deborah D. Avant, 227. From “Spicer’s Security Firm in Battle with DynCorp over \$290m Deal,” *Independent*, 4 July 2004.

<sup>51</sup> Deborah D. Avant, 227. See end of page note 27.

<sup>52</sup> Defense Science Board, “Achieving an Innovative Support Structure for 21st Century Military Superiority, Higher Performance at Lower Costs.” (1996 Summer Study), I-20.

<sup>53</sup> Allison Stanger, and Mark Eric Williams, 11.

<sup>54</sup> Anne-Marie Buzatu, and Benjamin S. Buckland, 20.

<sup>55</sup> Departement of State. Bureau of Political-Military Affairs. *Counterinsurgency Guide* January 2009. 2 <http://www.state.gov/documents/organization/119629.pdf>

<sup>56</sup> James Dobbins et. Al., *The Beginner’s Guide to Nation-Building*, (Santa Monica, CA: Rand 2007), xvii. <http://www.rand.org/pubs/monographs/MG557.html>

<sup>57</sup> Christa Moesgaard, and Stine Heiselberg, “Private Military Compagnies in Counter-insurgency Strategy,” (DIIS Policy Brief, March 2011), 3.

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<sup>59</sup> Christa Moesgaard, and Stine Heiselberg, 4.

<sup>60</sup> Shawn Engbrecht, *America’s Covert Warrior: Inside the World of Private Military Contractors*. Dulles (Virginia: Potomac Books, 2011), 211.

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